

No. 11420

United States
Circuit Court of Appeals
For the Ninth Circuit.

PAUL A. PORTER, Administrator, Office of Price
Administration,

Appellant,

vs.

DOROTHY HANSCOM and R. C. HANSCOM,
d.b.a. DOROTHY HANSCOM'S, a Co-part-
nership,

Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Western District of Washington
Northern Division

FILED

OCT 26 1946

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL

FREDERICK W. POST

DANIEL M. REAUGH

Attorney for Appellant,
3309 White-Henry-Stuart Building
Seattle, Washington.

MATTHEW STAFFORD of
MERRITT, SUMMERS & BUCEY

Attorneys for Appellees,
840 Central Building,
Seattle, Washington.

In the District Court of the United States for the
Western District of Washington, Northern
Division

Civil Action No. 1446

CHESTER BOWLES, Administrator,
Office of Price Administration,
Plaintiff,
vs.

DOROTHY HANSCOM and R. C. HANSCOM,
d. b. a. DOROTHY HANSCOM'S, a co-part-
nership,
Defendant.

COMPLAINT FOR TREBLE DAMAGES

Comes now the plaintiff, above-named, and for
cause of action against defendants above named,
alleges:

1. That the Office of Price Administration is an
agency of the Government of the United States of
America, created by the provisions of Section 201
(a) of the Emergency Price Control Act of 1942
(U. S. C. A. 901), as amended (56 Stat. 23, 765,
57 Stat. 566, P. L. 108, 79th Congress, First Ses-
sion), hereinafter referred to as the "Price Con-
trol Act", and that Chester Bowles, plaintiff herein,
is a duly appointed, qualified and acting adminis-
trator thereof.

2. That jurisdiction of this cause of action is
conferred upon the above entitled court by the
provisions of Section 205(c) of the Price Control

Act, and that said defendants now are, and have been, at all times, hereinafter mentioned engaged in the business of buying and selling commodities subject to Revised Maximum Price Regulation 330 (9 Fed. Reg. 11350; 10 Fed. Reg. 331, 10 Fed. Reg. 9960) hereinafter called "R.M.P.R. 330", which was issued pursuant to Section 2(a), Section 202 (b), and Section 201(d) of said Price Control Act with their principal place of business in King County within the jurisdiction of this court.

3. That the defendants have engaged in acts and practices hereinafter set forth which constitute a violation [2*] of Section 4(a) of the said Price Control Act in that they have violated R.M.P.R. 330, as amended, and that, therefore, pursuant to Section 205(e) of said Price Control Act, the Administrator brings this suit for treble damages.

4. That, at all times, from September 18, 1944, to and including January 1, 1946, said R.M.P.R. 330 had been and was in full force and effect establishing the maximum prices that could be charged for Women's, Girls', Children's and Toddlers' outerwear garments.

5. That defendants have made sales to purchasers for use or consumption other than in the course of trade or business of commodities subject to R.M.P.R. 330 at prices in excess of the maximum prices established by R.M.P.R. 330, as amended. That said sales were made more than thirty days prior to the filing of this complaint.

* Page numbering appearing at foot of page of original certified Transcript of Record.

Wherefore, plaintiff, prays the court for:

1. Judgment in favor of the plaintiff and against the defendants for three times the amount by which the prices charged by the defendants for said garments exceeded the maximum prices allowed for said garments under R.M.P.R. 330.

2. And for such other and further relief as the court may deem just and equitable in the premises.

/s/ FREDERICK W. POST

Apparel Enforcement Attorney.

/s/ DANIEL M. REAUGH

District Enforcement Attorney.

Attorneys for Plaintiff

[Endorsed]: Filed Jan. 22, 1946. [3]

[Title of District Court and Cause.]

ANSWER

Comes now the defendants, Dorothy Hanscom and R. C. Hanscom, d.b.a. Dorothy Hanscom's, and for answer to the complaint herein admit, deny and allege as follows:

I.

Referring to paragraphs 2, 3, 4 and 5 of the complaint herein, defendants deny each and every allegation therein contained save and except such

allegations contained therein as are hereinafter specifically admitted.

As a further answer and affirmative defense, defendants make the following allegations:

I.

That during the month of December, 1943, defendants commenced doing business as retailers of misses' and women's clothing in the City of Seattle, King County, Washington; that prior to the commencement of business defendant Dorothy Hanscom called in person on several occasions at the Seattle Office of Price Administration, and by that office she was instructed to use the pricing charts of Bests, Inc., of Seattle, as the pricing charts of Dorothy Hanscom's under Maximum Price Regulation 330, which was then the regulation controlling the establishment of pricing charts by defendants.

II.

That in compliance with said instructions of said Office of Price Administration, defendant Dorothy Hanscom obtained pricing charts from Bests, Inc., of Seattle, covering the various categories of merchandise which it was intended to deal in in the establishment of Dorothy Hanscom's, and these pricing charts were adopted by Dorothy Hanscom's [4] as that establishment's pricing charts under Maximum Price Regulation 330.

III.

That thereafter and during the month of De-

cember, 1943, Dorothy Hanscom's commenced doing business, and in the course of transacting said business sold many items of merchandise at prices lower than the ceilings fixed by the pricing charts which had been adopted as hereinabove stated and that at no time did said Dorothy Hanscom's make sales at prices higher than the ceilings fixed by the charts which had been adopted by defendants as hereinabove stated.

IV.

That this course of business continued until September, 1944; that on or about September 15, 1944, defendants received the following communication from the Seattle Office of Price Administration under the mimeographed signature of Reed C. Mills, District Price Executive, by Ruth Sollie, Apparel Section:

"September 14, 1944

"To All Dealers in Women's, Misses' and Children's Outerwear Garments:

"Revised Maximum Price Regulation No. 330, which governs the maximum prices to be charged for women's, children's and misses' outerwear garments, has just been issued and is effective September 18, 1944.

"According to this revised Regulation, it is necessary that you file two signed copies of the pricing chart, which you have previously prepared in conformance with Maximum Price Regulation No. 330, with the District Office of the Office of Price Administration, 3312 White Building, Seat-

tle, Washington, by October 15, 1944. You must keep a copy of the pricing chart for your own use. On and after November 15, 1944, you may not sell any garments subject to this Regulation unless you have received an acknowledgment from the OPA of the filing of your pricing chart.

“A copy of this revised Regulation will be sent to you by your local OPA Board as soon as they receive their supply.” [5]

That thereafter on or about October 8, 1944, defendants received from the Seattle Office of Price Administration over the mimeographed signature of Reed C. Mills, District Price Executive, by Ruth Sollie, Apparel Section, the following communication:

“Second Notice

October 7, 1944

“To All Dealers in Women’s, Misses’ and Children’s Outerwear Garments:

“Revised Maximum Price Regulation No. 330, which governs the maximum prices to be charged for women’s, children’s and misses’ outerwear garments, has just been issued and is effective September 18, 1944.

“According to this revised Regulation, it is necessary that you file two signed copies of the pricing chart, which you have previously prepared in conformance with Maximum Price Regulation No. 330, with the District Office of the Office of Price Administration, 3312 White Building, Seattle, Washington, by October 15, 1944. You must keep a copy of the pricing chart for your own use. On and

after November 15, 1944, you may not sell any garments subject to this Regulation unless you have received an acknowledgment from the OPA of the filing of your pricing chart.

“A copy of this revised Regulation will be sent to you by your local OPA Board as soon as they receive their supply.”

That said Reed C. Mills and said Ruth Sollie were duly authorized and empowered representatives of plaintiff and were acting within the scope of their authority in sending these communications to defendants.

V.

That on or about October 12, 1944, defendants filed with the Office of Price Administration at Seattle all of the pricing charts of Bests, Inc., which defendants Hanscom had adopted as hereinabove described, and which defendants had been using as their pricing charts continuously from the time they commenced business in December, 1943; that under date of October 14, 1944, the Seattle Office of Price Administration [6] acknowledged receipt of the defendants' charts in the following communication:

October 14, 1944

“Dorothy Hanscom's
423 University St.
Seattle, Washington

Dear Miss Hanscom:

“We hereby acknowledge the receipt of two copies of the pricing chart which you have filed

under Section 3 of Revised Maximum Price Regulation No. 330.

“This acknowledgment is not to be considered as an approval of the factual or mathematical accuracy of the information on the pricing chart. Even though you have filed these figures, if they are incorrect, you are not permitted to take a higher percentage markup than that authorized by Revised Maximum Price Regulation No. 330. However, if you find that your pricing chart is incorrect, you may file an amended pricing chart setting forth the inaccuracies.

“If you file an amended pricing chart, you are not permitted to take a higher percentage markup than that previously reported, or permitted under Revised Maximum Price Regulation No. 330, whichever is lower, until you have received an acknowledgment from this office of the receipt of the amended pricing chart.”

VI.

That at no time prior to and including October 15, 1944, was a copy of Revised Maximum Price Regulation 330 available to defendants.

VII.

That after defendants filed their pricing charts with the Seattle Office of Price Administration during the month of October, 1944, defendants, having literally complied with the directions contained in the communications from the Office of Price Administration dated September 14, 1944, and Octo-

ber 7, 1944, and having no reason to question the factual or mathematical accuracy of the information contained in the pricing charts so filed, assumed and continued to assume until November, 1945, that they had complied with all of the regulations [7] of the Office of Price Administration which affected their business; that everything done by defendants as described herein was done in good faith pursuant to the orders communicated to defendants by the Office of Price Administration in the communications set forth in paragraph IV hereof.

VIII.

That on November 26, 1945, the Seattle Office of Price Administration advised the defendants that the charts which defendants had filed in response to the communications addressed to defendants by the Seattle Office of Price Administration on September 14, 1944, and October 7, 1944, were erroneously compiled and did not meet the requirements of Revised Maximum Price Regulation 330; this communication further advised defendants that under Revised Maximum Price Regulation 330 defendants should not have filed the pricing charts which the Seattle Office of Price Administration ordered defendants to file on September 14, 1944, and October 7, 1944, but that defendants should have filed a base period pricing chart based on deliveries by defendants of garments during the first four months immediately following the first delivery of garments by defendants; this communication further requested defendants to submit an

amended pricing chart under Revised Maximum Price Regulation 330; that defendants promptly complied with this request.

IX.

That because of the fact that during the four months immediately following the first delivery of garments by defendants in December, 1943, defendants actually sold some garments at prices lower than the ceilings established by the pricing charts which had been adopted by defendants as described in paragraph II hereof, the compilation of defendants' amended pricing chart, as requested by the Seattle Office of [8] Price Administration on November 26, 1945, and the application of that amended pricing chart to sales and deliveries made by defendants Hanscom during the period beginning January 22, 1945, and continuing to the present time showed that, according to this amended pricing chart defendants had made sales in the course of their trade and business at prices in excess of the maximum prices established by Revised Maximum Price Regulation 330 as amended; that the total amount of all of said overcharges was Seven Hundred Fourteen and 01/100 Dollars (\$714.01).

X.

That it is the position of the defendants that, because every act done by defendants herein was done in good faith and pursuant to express orders of the Seattle Office of Price Administration and with no intent or desire to violate any provision

of the applicable law or of any regulation, order, price schedule, requirement or agreement thereunder, plaintiff herein is estopped from prosecuting this action and that defendants are entitled to have the complaint herein dismissed with prejudice.

Wherefore, having fully answered the complaint of the plaintiff herein, defendants pray that said complaint be dismissed with prejudice.

MERRITT, SUMMERS,
BUCEY & STAFFORD

By MATTHEW STAFFORD
Attorneys for Defendants.

State of Washington,
County of King—ss.

R. C. Hanscom, being first duly sworn on oath deposes and says: That he is one of the defendants named in the foregoing answer; that he has read said answer, knows the contents thereof and believes the same to be true.

R. C. HANSCOM

Subscribed and sworn to before me this 2 day of April, 1946.

[Seal] MATTHEW STAFFORD

Notary Public in and for the State of Washington, residing at Seattle.

[Endorsed]: Filed April 12, 1946. [10]

[Title of District Court and Cause.]

MOTION TO SUBSTITUTE

Paul A. Porter by his counsel, respectfully informs the court that Chester Bowles, a party in this action, has resigned from the Office of Price Administrator of the Office of Price Administration. His resignation was duly accepted and said Paul A. Porter, whose appointment by the President for the Office of Administrator was confirmed by the United States Senate on February 21, 1946, entered upon his duties in said office on February 26, 1946, and is now lawfully acting as Administrator of the Office of Price Administration. There is substantial need of continuing and maintaining this action by him as successor in office to Chester Bowles as Administrator of the Office of Price Administration, for the reason that this action relates to the present and future discharge of the Office of Administrator of the Office of Price Administration, and is important in the administration and enforcement of the Emergency Price Control Act, as amended.

Wherefore, Paul A. Porter, as Administrator of the Office of Price Administration, moves for leave to be substituted as a party in the place and stead of Chester Bowles under authority of Rule 25(d) of Federal Rules of Civil Procedure.

Dated this 18th day of March, 1946.

/s/ JOE S. PEARSON

/s/ DANIEL M. REAUGH

Attorneys for the Administrator

[Endorsed]: Filed Mar. 30, 1946. [11]

[Title of District Court and Cause.]

ORDER FOR SUBSTITUTION

This matter having come on regularly for hearing this day before the undersigned, one of the Judges of the above entitled court, and it appearing to the court that Chester Bowes, plaintiff, a party in this action, has resigned from the Office of Price Administrator, of the Office of Price Administration effective February 26, 1946; that his resignation was duly accepted and that said Paul A. Porter entered upon the duties of said office on February 26, 1946, and is now lawfully acting as Administrator of the Office of Price Administration; that there is substantial need of continuing and maintaining this cause by him as successor in office to Chester Bowles as Administrator of the Office of Price Administration for the reason that this action relates to the present and future discharge of the office of Administrator of the Office of Price Administration and is important in the administration and enforcement of the Emergency Price Control Act; that good and sufficient notice

of the plaintiff's motion for substitution has been given to all interested parties, and the court being fully advised in the premises, now therefore, it is

Ordered, that Paul A. Porter, Administrator of the Office of Price Administration, is substituted as plaintiff in this action in the place and stead of Chester Bowles.

Done in open court this 6th day of April, 1946.

JOHN C. BOWEN

Judge

Presented by: JOE S. PEARSON

[Endorsed]: Filed April 6, 1946. [12]

[Title of District Court and Cause.]

STIPULATION

The parties hereto, by their respective counsel, hereby stipulate and agree as follows:

Whereas, plaintiff has filed in the above entitled court under Section 205(a), 205(c) of the Emergency Price Control Act of 1942, as amended, a complaint alleging therein that the above named defendants have violated Revised Maximum Price Regulation 330, as amended, issued pursuant to said Act and seeking judgment for treble damages; and

Whereas, it has been determined by the plaintiff and the defendants that the alleged overcharges,

if any, amount to \$714.01, and that said overcharges, if any, were not wilfully made or made through failure to exercise due precautions; and

Now Therefore, It Is Hereby Stipulated and Agreed by and Between the Parties Hereto

1. That in the event the defendants are found to have made the said overcharges alleged herein in the amount of \$714.01, plaintiff shall ask for judgment in the sum not to exceed \$714.01.

In Witness Whereof, the undersigned have caused their hands to be affixed the 12th day of April, 1946, at the City [13] of Seattle, Washington.

/s/ FREDERICK W. POST

/s/ DANIEL M. REAUGH

Enforcement Attorneys

Attorneys for Plaintiff

MERRITT, SUMMERS,

BUCEY, STAFFORD

By MATTHEW STAFFORD

Attorneys for Defendant.

[Endorsed]: Filed April 12, 1946. [14]

[Title of District Court and Cause.]

MOTION FOR JUDGMENT ON THE
PLEADING

Now comes the plaintiff by his attorneys and moves this court for Judgment on the Pleadings

under the provisions of Rule 12(c), for the reason that the affirmative defense set up in defendants' answer is insufficient in law to constitute a defense to plaintiff's complaint.

/s/ FREDERICK W. POST
Enforcement Attorney

/s/ DANIEL M. REAUGH
District Enforcement Attorney
Attorneys for Plaintiff

NOTICE

Defendant will take notice that the foregoing motion for judgment on the pleadings will come on for hearing before Judge Bowen on April 29, at 10:00 A. M. or at such time thereafter as the court may designate.

/s/ FREDERICK W. POST
Enforcement Attorney

Service of the foregoing notice acknowledged this 25 day of April, 1946.

MERRITT, SUMMERS
& BUCEY

By M. W. WILSON
Attorney for Defendant

[Endorsed]: Filed April 26, 1946. [15]

[Title of District Court and Cause.]

ORDER DENYING MOTION OF PLAINTIFF
FOR JUDGMENT ON THE PLEADINGS

This matter having come on before the undersigned judge of the above-entitled court on April 29, 1946, on motion of plaintiff for judgment on the pleadings; plaintiff being represented by Frederick W. Post, Enforcement Attorney of the Office of Price Administration of the United States of America, defendants being represented by Merritt, Summers, Bucey & Stafford, Matthew Stafford of counsel; and the court having considered said motion, the pleadings to which it was addressed, the brief in support thereof, and the memorandum in opposition thereto, and having heard argument of counsel, and being otherwise fully advised in the premises; Therefore

It is hereby Ordered that plaintiff's motion for judgment on the pleadings heretofore filed herein be and it is hereby denied.

Exception is allowed to plaintiff.

Done in open court this 14th day of May, 1946.

JOHN C. BOWEN

Judge.

Presented by: Merritt, Summers, Bucey & Stafford, By Matthew Stafford.

Approved as to form:

Enforcement Attorney of the Office of Price
Administration of the U. S. A.

Copy received 14 May 1946.

FREDERICK W. POST

[Endorsed]: Filed May 14, 1946. [16]

[Title of District Court and Cause.]

STIPULATION AS TO FACTS

Plaintiff and defendants herein hereby make and enter into the following stipulation as to agreed facts for use hereafter throughout this proceeding:

I.

The stipulation heretofore entered into herein under date of April 12, 1946, is by this reference made a part hereof as fully as though set out herein verbatim.

II.

All allegations contained in paragraphs I, II, III, IV, V, VI, VII, VIII and IX of defendants' further answer and affirmative defense heretofore filed herein are admitted by plaintiff to be true except the following portion of paragraph IV thereof:

"That said Reed C. Mills and said Ruth Sollie were duly authorized and empowered representatives of plaintiff and were acting within the scope of their authority in sending these communications to defendants."

III.

It is the purpose of this stipulation to limit the issues for trial in this case to the questions whether or not Reed C. Mills, District Price Executive, and Ruth Sollie, Apparel Section, of the Seattle Office of Price Administration, acted within the scope of their authority in sending to defendants the communications of September 14, 1944, and October 7, 1944, which [17] are set out verbatim in paragraph IV of the further answer and affirmative defense on page 2 and 3 of the answer of defendants heretofore filed herein, and whether defendants were required to comply literally with the instructions contained in those communications or whether defendants were justified in complying with those instructions, and whether the defendants' compliance with those instructions constitutes a defense to this action.

Done at Seattle, Washington, this 7th day of May, 1946.

/s/ FREDERICK W. POST

/s/ DANIEL M. REAUGH

Enforcement Attorneys

Attorneys for Plaintiff

DOROTHY HANSCOM et al,

Defendant

MERRITT, SUMMERS,

BUCEY & STAFFORD

By G. H. BUCEY

Attorneys for Defendant

[Endorsed]: Filed May 10, 1946. [18]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

Civil Action No. 1446

PAUL A. PORTER, Administrator, Office of Price
Administration,

Plaintiff,

vs.

DOROTHY HANSCOM and R. C. HANSCOM,
d.b.a. DOROTHY HANSCOM'S, a co-partner-
ship,

Defendants.

JUDGMENT

This matter having come on for trial duly and regularly before the undersigned judge of the above-entitled court on May 14, 1946, plaintiff appearing by Frederick W. Post, defendant R. C. Hanscom appearing in person and by Merritt, Summers, Bucey & Stafford, Matthew Stafford of counsel; the court having heard testimony of witnesses given in person and by deposition and having received documentary evidence, and having heard argument of counsel, and being otherwise fully advised in the premises;

The court finds that the actions of defendants and each of them of which plaintiff complains in this action were solely and directly caused by orders given to defendants by plaintiff, and that

plaintiff is estopped from maintaining this action; the court further finds that plaintiff has failed to prove any violation of any statute of the United States or regulation thereunder as alleged in the complaint herein.

Therefore, it is Ordered, Adjudged and Decreed that the complaint of the plaintiff herein be and it is hereby dismissed with prejudice and without costs.

Done in open court this 17th day of May, 1946.

JOHN C. BOWEN

Judge. [19]

Presented by:

MERRITT, SUMMERS,

BUCEY & STAFFORD

By MATTHEW STAFFORD,

Attorneys for Defendants.

Approved as to form:

FREDERICK W. POST

Enforcement Attorney for the Office of Price
Administration of the U. S. A. at Seattle,
Washington.

[Endorsed]: Filed May 17, 1946. [20]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Paul A. Porter, the Administrator of the Office of Price Administration, the plaintiff above named, hereby appeals to the Circuit Court of Appeals for the 9th Circuit

from the final judgment entered in this action on May 17, 1946.

/s/ FREDERICK W. POST,
Enforcement Attorney.

/s/ DANIEL M. REAUGH,
District Enforcement Attorney
Attorneys for Plaintiff.

Copy received Aug. 6, 1946. Merritt, Summers & Bucey, Attorneys.

[Endorsed]: Filed Aug. 7, 1946. [21]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF
RECORD ON APPEAL.

To the Clerk of the above entitled court:

Please prepare and transmit to the Circuit Court of Appeals for the Ninth Circuit, a record of the following pleadings and documents in the above entitled cause:

1. Complaint for Treble Damages.
2. Answer.
3. Motion to Substitute.
4. Order of Substitution.
5. Stipulation.
6. Motion for judgment on the pleadings.

7. Stipulation as to Facts.
8. Decision of District Judge.
9. Judgment.
10. Notice of Appeal.
11. Reporters Transcript of Testimony.

FREDERICK W. POST,
Enforcement Attorney

DANIEL M. REAUGH,
District Enforcement Attorney
Attorneys for Plaintiff.

Copy Received Aug. 14, 1946. Merritt, Summers
& Bucey, Attorneys.

[Endorsed]: Filed Aug. 14, 1946. [22]

[Title of District Court and Cause.]

STATEMENT OF POINTS TO BE RELIED
ON UPON APPEAL

Appellant, Paul A. Porter, Administrator, Office of Price Administration, will urge and rely upon the following points on the appeal taken by him in this cause:

1. The Court erred in finding that the actions of defendants and each of them were solely and directly caused by orders given to the defendants by plaintiff.

2. The Court erred in holding that plaintiff is estopped from maintaining this action.

3. The Court erred in finding that the plaintiff had failed to prove any violation of any statute of the United States or regulation thereunder as alleged in the complaint.

4. The Court erred in dismissing plaintiff's complaint with prejudice.

5. The Court erred in denying plaintiff's motion for judgment on the pleadings. [22-a]

6. The Court erred in failing to find that defendants had violated the Emergency Price Control Act and Revised Maximum Price Regulation 330, issued thereunder.

7. The Court erred in failing to enter judgment for plaintiff and against the defendants in the sum of \$714.01.

/s/ GEORGE MONCHARSH,
Deputy Administrator for
Enforcement.

/s/ DAVID LONDON,
Director, Litigation Division.

/s/ ALBERT M. DREYER,
Chief, Appellate Branch.

/s/ ABRAHAM MALLER,
Special Appellate Attorney.
Office of Price Administration
Washington 25, D. C.

/s/ DANIEL M. REAUGH,
District Enforcement Attorney.

/s/ FREDERICK W. POST,
Enforcement Attorney.
Office of Price Administration
Seattle, Washington

Copy received Aug. 30, 1946. Merritt, Summers
& Bucey, Attorneys.

[Endorsed]: Filed Aug. 29, 1946. [22-b]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO TRAN-
SCRIPT OF RECORD ON APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that the foregoing typewritten transcript of record, consisting of pages numbered from 1 to 22, inclusive, is a full, true and complete copy of so much of the record, papers and other proceeding in the above entitled cause as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court at Seattle, and that the same, together with the reporter's transcript of testimony and proceedings transmitted as a part hereof constitute the record on appeal herein from the judgment of said

United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellant for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth [23] Circuit, to wit:

Clerk's fees for making record, certificate or return:

17 pages at 40c	\$ 6.80
4 pages at 10c (copies furnished)40
Appeal fee	5.00
<hr/>	
Total	\$12.20

I further certify that the foregoing fees have not been paid to me for the reason that the appeal is being prosecuted on behalf of the Government.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, in said District, this 27th day of August, 1946.

(Seal) MILLARD P. THOMAS,
Clerk.

By /s/ TRUMAN EGGER,
Chief Deputy. [24]

In the District Court of the United States
For the Western District of Washington
Northern Division

No. 1446.

PAUL A. PORTER, Administrator,
Office of Price Administration,
Plaintiff,

vs.

DOROTHY HANSCOM and R. C. HANSCOM,
d.b.a. DOROTHY HANSCOM'S, a
co-partnership,
Defendants.

Before the Honorable John C. Bowen, District
Judge.

Appearances: Frederick W. Post, Esq., Office
of Price Administration, Enforcement Attorney,
appearing for the Plaintiff;

Matthew Stafford, Esq., appearing for the de-
fendants.

Whereupon, the following proceedings were had
and done, to-wit: [1*]

* Page numbering appearing at top of page of original Reporter's
Transcript.

Seattle, Washington
May 14, 1946, 10:30 a.m.

PROCEEDINGS

The Court: Are the parties and counsel ready to proceed with the trial of Paul A. Porter, Administrator, Office of Price Administration, Plaintiff, versus Dorothy Hanscom and R. C. Hanscom, doing business as Dorothy Hanscom's, a co-partnership, defendants?

Mr. Stafford: Before we go into the trial, I should like——

The Court: Counsel may retain their present stations.

Mr. Stafford: I should like to present at this time an Order embodying Your Honor's ruling on the motion of the Plaintiff for judgment on the pleadings.

I might mention that counsel for plaintiff does not approve the form of this Order.

Mr. Post: If Your Honor please, the Order, I believe, goes farther than the Court's ruling.

The Court: Do you have a proposed order that does carry into effect the Court's ruling?

Mr. Post: No, I have not, Your Honor. The [2] Court heard the matter and overruled the plaintiff's motion. That is all I wish it to contain. The defendant here states more than the Court ruled. I believe he includes in here more than the Court actually ruled.

The Court: What words are more than the Court ruled?

Mr. Post: The Court found as follows: The Court found that the affirmative defense set up was sufficient in law to constitute a defense to it. I submit that the Court merely ruled that and made no finding as to the legal effect of the defendant's allegations as to the affirmative defense.

Mr. Stafford: I would like to be heard on that, your Honor.

The Court: Yes, you may be heard.

Mr. Stafford: If your Honor please, the sole basis for plaintiff's motion was that the affirmative portion of the defendant's Answer did not constitute in law a defense to the action. For that reason the plaintiff moved for judgment on the pleadings. I believe that it is impossible to deny the motion without finding that the matter did constitute a legal defense to the action. If it didn't constitute a defense to it, then your Honor must have allowed the [3] motion. That is the only——

The Court: Mr. Clerk, have you any minutes on this?

The Clerk: Yes, your Honor, but I do not have them here.

The Court: Bring them up, will you, or send down for them?

We will wait a moment.

Now, do you gentlemen have anything else to say?

Mr. Stafford: I have this to say, your Honor, that if it is Mr. Post's or your Honor's impression that I have maintained that there was any specific ruling by your Honor in so many words, I do not

maintain that at all. I drew this Order based on the language of the motion and on your Honor's ruling. As I say, I think it is not possible to deny the motion without making that finding, but I do not really care whether that finding is in there or not.

The Court: I think that what the Court had in mind I could tell better after hearing the evidence, so I am eliminating those words.

Mr. Stafford: I have no objection.

The Court: Lines 19 to 21, these words: "The Court found that the affirmative defense set up in Defendants' Answer was sufficient in law to constitute [4] a defense to Plaintiff's Complaint." Eliminate those words.

Let this Order be now entered.

You may proceed with the Plaintiff's opening statement.

OPENING STATEMENT PRESENTED BY ATTORNEY FOR THE PLAINTIFF

Mr. Post: The Plaintiff rests at this point.

The Court: You don't wish to go forward with any evidence; you do not wish to put on any evidence?

Mr. Post: No, your Honor.

The Court: The Defendant may now proceed.

Mr. Stafford: I regard it as necessary, if your Honor please, to review in my own way the situation as it now exists before any evidence is put in.

The Court: You may do that by saying to the Court at this time what you think the proof will

show. We will hear the argument on the merits later.

Mr. Stafford: Well, before I go into that, if your Honor please, I want to be very certain——

The Court: I just wish you to make an opening statement. That is all the Court will hear at this time, an opening statement of what you think the proof [5] will show.

OPENING STATEMENT PRESENTED BY ATTORNEY FOR THE DEFENDANTS

Mr. Stafford: * * * Now, if your Honor please, there is, or should be in the file in this case a deposition of Mr. Irvin A. Hoff, which I would like to have published at this time.

The Court: Is there any objection?

Mr. Post: No objection, your Honor.

The Court: It is now published.

Do counsel agree that the Court may discard the jacket?

Mr. Post: Yes, your Honor.

Mr. Stafford: Yes, your Honor.

The Court: That is discarded and thrown away.

Let Counsel have that deposition. It is now published.

You may proceed to read it, if you wish to do so now.

Mr. Stafford: Is it agreeable, Counsel, if I omit reading the preamble?

Mr. Post: Yes. [6]

Mr. Stafford: This is the deposition of Irvin A. Hoff, which was taken on May 10, 1946 at

2:30 p.m., at the District Office of the Office of Price Administration, Enforcement Division, 3312 White Building, in the city of Seattle, County of King, State of Washington, before Walter R. Groshong, Notary Public in and for the State of Washington; the Plaintiff appearing by Frederick W. Post, Esq., Enforcement Attorney, who is now in attendance at this trial; the Defendants were represented by myself.

I shall proceed directly to the reading of Mr. Hoff's testimony which begins on page 3 of the deposition.

(Reading.)

IRVIN A. HOFF

called as an adverse witness on behalf of the Defendants, having been first duly sworn, deposed and said as follows:

Direct Examination

“By Mr. Stafford:

“Q. Would you state your name, please?

“A. Irvin A. Hoff.

“Q. Are you employed by the Office of Price Administration of the United States of America?

“A. Yes.

“Q. In what capacity, Mr. Hoff? [7]

“A. As District Director of the Seattle District.

“Q. Who would be your immediate superior in the Office of Price Administration organization?

(Deposition of Irvin A. Hoff.)

“A. Mr. Ben C. Duniway, Regional Administrator.

“Q. Where is his office located?

“A. San Francisco, California.

“Q. So that as far as the Seattle District is concerned, you are the ranking official in that District? A. Yes.

“Q. Who was Director of the Seattle District of the Office of Price Administration during the months of September and October, 1944, Mr. Hoff?

“A. Arthur J. Krauss, of this city.

“Q. Was the position occupied by Mr. Krauss in all substantial particulars the same as the position now occupied by you? A. Yes.

“Q. Have you ever had as a subordinate Mr. H. C. Mills?”

Mr. Stafford: That is obviously an error there. It should read “Mr. Reed C. Mills.” Is that agreeable to Counsel?

Mr. Post: Yes, Reed C. Mills.

Mr. Stafford (Continues reading of deposition):

“A. From August 15, 1945, until March, 1946, he was [8] a subordinate.

“Q. Of yours? A. Of mine.

“Q. In what capacity, Mr. Hoff?

“A. As District Price Executive.

“Q. Do you know whether or not Mr. Mills occupied the position of District Price Executive under Mr. Krauss in the Seattle District Office during the months of September and October, 1944?

“A. Yes, I know that he did.

(Deposition of Irvin A. Hoff.)

“Q. Do you know, Mr. Hoff, whether or not there were in existence during and prior to the months of September and October, 1944, any written definition or limitation of the authority which Mr. Mills, as District Price Executive, could exercise on behalf of the Office of Price Administration? A. Yes.

“Q. What writings constituted that definition or limitation of his authority, Mr. Hoff?

“A. First, there is Revised Procedural Regulation No. 1, including Amendments 1 to 9,—

“Q. Of the Office of Price Administration?

“A. Of the Office of Price Administration. (Continuing) —issued on August 26, 1944, and, second, [9] a job description approved by the Civil Service Commission on October 9, 1943, which set forth in broad terms his responsibilities.

“Q. Are there any others?

“A. In addition his own specific job description set up under the standards provided by Civil Service, containing limitations on his authority.

“Q. Is that available here today?

“A. It is not.

“Q. Is his own specific job description available today? A. No.

“Q. Where would that be found?

“A. It is in the Personnel Section of the Regional Office in San Francisco.

“Q. Has it ever been a part of the records of the Seattle Office as far as you know?

“A. Yes, it has.

(Deposition of Irvin A. Hoff.)

“Q. Why is it no longer a part of the records of the Seattle District Office?

“A. It normally would be. In this specific case the job description was either sent to the Regional Office for examination or our own copy is misplaced.

“Q. Do these three documents, then, constitute the [10] sole written definition or limitation of the authority of the District Price Executive? By ‘these three,’ of course, I refer to Revised Procedural Regulation No. 1, the general Civil Service job description and the specific job description which you have just mentioned.

“A. To the best of my knowledge, yes.

“Q. Has it been the practice of the Office of Price Administration, particularly of the Seattle District, to grant or limit authority of the District Price Executive by oral communication from his superior or superiors?

“A. There have been times when Mr. Mills, or the Price Executive, if you wish to put it that way, has been delegated authority to act as Acting District Director in the absence of the District Director, to assist in informational activities, but the District Director, to whom the Price Executive is directly responsible, has no authority to delegate to Mr. Mills responsibilities for action outside that contained in his job description and in Procedural Regulation No. 1.

“Q. Who, then, would confer upon Mr. Mills authority to act as Acting District Director? [11]

(Deposition of Irvin A. Hoff.)

“A. The District Director has that authority.

“Q. Is there any record in this office from which can be established the exact periods during which Mr. Mills acted as Acting District Director?

“A. Yes.

“Q. Do you have those records before you?

“A. I have them available right here.

“Q. All right, it will be very helpful if you will break them out. We can pass that for a minute. We will pass that for a moment, Mr. Hoff, and go to something else.

“Now, taking up the first of the writings you have mentioned as constituting definitions of the District Price Executive's authority, do you have an extra copy of that?

“A. I think we can get one to include in the record.

“Mr. Stafford: That is what I was thinking we would do. Let the record show that a copy of Revised Procedural Regulation Number 1 has been marked as Defendants' Exhibit 1.

“(Whereupon, copy of Revised Procedural Regulation No. 1, Office of Price Administration, dated August 26, 1944, was marked Defendants' Exhibit 1 for identification, is attached hereto and forwarded herewith.) [12]

“Q. (By Mr. Stafford): Referring to Defendants' Exhibit No. 1, Mr. Hoff, I will ask you to state if you know what that is.

“A. Yes.

“Q. What is it?

(Deposition of Irvin A. Hoff.)

“A. That is a regulation put out by the——

“Q. No, I mean the title.

“A. Revised Procedural Regulation No. 1.

“Q. Of the Office of Price Administration?

“A. Of the Office of Price Administration.

“Q. Now I should like to ask you to refer to such portion or portions of that Regulation, Mr. Hoff, as you claim or believe to constitute the definition of the authority of the District Price Executive.

“A. Sections 54 and 55 of Procedural Regulation No. 1.

“Q. Now referring to Section 54 of Procedural Regulation No. 1, which constitutes Defendants' Exhibit No. 1 in this case, I shall call your attention to this language, which occurs in the opening sentence of that Section,

“‘An interpretation rendered by an officer or employee of the Office of Price Administration with respect to any provision of the Act or of any regulation, price schedule, order, requirement, [13] or agreement thereunder * * *.’ I would like to ask you to state, if you know, what is the meaning of the word ‘order’ in that sentence.

“A. My belief is that the word ‘order’ refers to pricing orders issued by a National, Regional or District office setting prices for a particular office setting prices for a particular firm as a result of application by that firm for an adjustment in prices.

(Deposition of Irvin A. Hoff.)

“Q. Is that the only kind of order that the Office of Price Administration can issue?

“A. I am not sure on that point.

“Q. Is it not a fact, Mr. Hoff, that the Office of Price Administration issues orders of different kinds than the one you have just described?

“A. In our own official language within the agency an ‘order’ to the best of my knowledge refers to a pricing order. We do issue instructions to the trade, but again within the official language of the agency those would not be considered orders.

“Q. Refer now, Mr. Hoff, to Section 64 of PR-1, a copy of which constitutes Defendants’ Exhibit 1, in this case. If you have it before you, you will note that that Section deals with definitions [14] as used in this Revised Procedural Regulation. You will find there ten terms defined. After looking it over will you state whether or not you find any special definition for the word ‘order’?

“A. I do not.

“Q. Do you find therein any special definition of the word ‘requirement’? A. No.

“Q. Now refer to Paragraph (d) of Section 64 of Defendants’ Exhibit 1 and I will ask you if you do not find this language,

“‘Maximum price regulation means any regulation or order establishing a maximum price or prices.’

“That language occurs? A. Yes.

“Q. Does not that language suggest to you that an order establishing a maximum price or prices

(Deposition of Irvin A. Hoff.)

is only one type or order and that that is the only type that is brought within the definition of 'maximum price regulation'? You don't need to answer that question. That will be a matter for the Court to decide.

"Now referring back to Section 54, Mr. Hoff, [15] I will call your particular attention to the word 'requirement' which occurs in the first sentence of that Section. What is your understanding of the word 'requirement' as used in that Section?

"A. To my mind that refers to the Emergency Price Control Act under which the Office of Price Administration operates.

"Q. If your understanding is correct, then why does the word "Act" appear in the immediate preceding line?

"A. Because the subject of this Section deals with interpretations of regulations, price schedules, orders or requirements under the Act.

"Q. Does not that statement by you concede, then, Mr. Hoff, that orders and requirements are made under the Act which exists separately from the Act? A. Yes.

"Q. Who issues such orders and who pronounces such requirements on behalf of the Office of Price Administration?

"A. Orders, regulations——

"Q. No, just orders and requirements.

"A. All right. Orders and requirements are issued [16] in the name of the Administrator nationally, the Regional Administrator regionally or

(Deposition of Irvin A. Hoff.)

the District Director locally, limited by the authority that each possesses.

“Q. Are any orders or requirements issued or pronounced by anyone else except the Administrator, the Regional Administrator or the District Director?

“A. Not within my understanding of the terms ‘orders’ and ‘requirements.’ I must qualify that by saying in the absence of the Administrator, Regional Administrator or District Director, the individual designated to act in his absence would possess the same authority.

“Q. Now, can you produce any document, Mr. Hoff, which says that no one but the Administrator, the Regional Administrator or District Director can issue an order or pronounce a requirement under this Act?

“A. The only evidence I have of that fact as concerns my own position as District Director is contained in the OPA Manual, Chapter 1-102, titled ‘District Offices,’ a chapter which outlines the authority of the District Director.

In Section 1-10202 of this chapter, Subsection [17] .04, the following statement appears, referring to the District Director,

‘Shall sign all documents requiring official signature with his name and title.’

“Q. And that constitutes the only written evidence of what you believe to be the limitation on the authority of anyone to sign or to issue orders for the Office of Price Administration?

(Deposition of Irvin A. Hoff.)

“A. The only evidence of which I have knowledge.

“Q. Now referring again to Section 54 of Procedural Regulation No. 1, a copy of which constitutes Defendants’ Exhibit No. 1 in this case, I will ask you to state, Mr. Hoff, if it isn’t your reading of the first sentence of that paragraph or section that it deals with the interpretations of any provision of the Act, or of any regulation, price schedule, order, requirement, or agreement thereunder, and that therefore the regulation, price schedule, order, requirement or agreement must exist separately from the Act and separately from the interpretation discussed here? A. Yes.

“Q. Referring now to Section 1 of Revised Procedural Regulation No. 1, on the first page, does that section not state that it is the purpose of this [18] regulation to prescribe and explain the procedure used by the Office of Price Administration in making various kinds of price determinations? That sentence, of course, occurs there, does it not?

“A. Yes.

“Q. So that the express purpose of this Procedural Regulation has to do solely with the procedure used by the Office of Price Administration in making price determinations?

“A. That is right.

“Q. Now, is the matter of filing a pricing chart the making of a price determination?

“A. No, not in my mind.

“Q. Getting back to the question of the author-

(Deposition of Irvin A. Hoff.)

ity of the District Price Executive, may I see the second document which you have described, which you described generally as the general job description issued by the United States Civil Service Commission? I should like to ask you, Mr. Hoff, in connection with this document whether or not the Seattle District Office of the Office of Price Administration is a Class A Office of Price Administration District Office? A. It is. [19]

“Q. And was it during the entire period of 1944? A. Yes.

“(Whereupon, Office of Price Administration release of United States Civil Service Commission job description of ‘District Price Officer’ was marked Defendants’ Exhibit No. 2 for identification, is attached hereto and forwarded herewith.)

“Q. (By Mr. Stafford): Handing you Defendants’ Exhibit 2, Mr. Hoff, I will ask you to state, simply for the purpose of identification, whether or not that is the second of the two documents to which you referred earlier in your testimony as constituting the written definition of the authority of the District Price Executive? A. Yes.

“Mr. Stafford: I should like to have that admitted in evidence in this record, Mr. Post.

“Mr. Post: I have no objection to the admission of that document.

“Q. (By Mr. Stafford): Now, the third document to which you referred as constituting a definition of the authority of the District Price Execu-

(Deposition of Irvin A. Hoff.)

tive, Mr. Hoff, is the substance of that document set forth on the chart which now appears on your desk? A. Yes. [20]

“Q. Is the substance of that document set forth in that District in the following language:

‘Office of the Price Executive. Responsible for direction and operation of District Price Division, subject to administrative supervision of the District Director and technical direction of the Regional Price Executive.

‘Establishes operating policies of the District Price Division, consistent with those of the National and Regional Offices.

‘Charged with securing trade and public understanding of and compliance with price regulations and orders.

‘Acts in cooperation with other appropriate divisions, to insure issuance of uniform information and interpretation by local boards and appropriate actions in retail violation cases.

‘Directs through appropriate price sections, collection of information relation to supply, flow and distribution of commodities and maximum recommendations for orders or amendments affecting commodities subject to price control. [21]

‘Selects, allocates duties, trains and supervises division staff, through the appropriate section heads.

‘Responsible through designated channels, for directing administrative functions essential to effective operation of the division.

(Deposition of Irvin A. Hoff.)

'Provides for handling new, enlarged or altered programs through reassignment of staff duties, increased personnel or activity priority schedules.

'Prepares and reviews statistical data and reports required by District Director or through regional office.

'Acts as representative for the District Director or Regional Price Executive when requested.'

"A. Yes.

"Q. In a District Office of the Office of Price Administration, Mr. Hoff, is it not a fact that the District Price Executive is, under the District Director, the key executive, or the most important executive? Put it that way.

"A. In administering the affairs of price control, yes. He is supplemented, however, by other [22] division heads who have co-status with him.

"Q. What are the other division head positions?

"A. District Enforcement Attorney, District Rent Executive, District Board Executive and District Information Executive. However, all of those programs revolve around the price program.

"Q. And the heart of the whole program being the price program, the Price Executive would be in what might be properly termed the key position in the organization under the District Director?

"A. That is right.

"Q. And that is the position occupied by Mr. Mills during the months of September and October, 1944?

A. Yes.

"Q. Would it be proper to say that there was

(Deposition of Irvin A. Hoff.)

no District Officer or representative of the Office of Price Administration in the Seattle District who would be regarded as a superior to Mr. Mills during that period other than the District Director? A. Yes.

“Q. Does the District Director ever directly personally [23] concern himself in the administration of the Act or any regulation, order or requirement under the Act in the sense that he deals directly with the members of the trade who are subject to the Act?

“A. On occasions, yes.

“Q. Usually does he? A. Usually, no.

“Q. Usually is it not a fact that in dealing with any wholesaler, manufacturer or retailer that the direct contact with the manufacturer, wholesaler or retailer would be through the Price Executive?

“A. Through the Price Executive or one of his section heads.

“Q. Is it not a fact that it is one of the duties of the Price Executive, either acting in person or through one of his section heads, to instruct the trade and see to it that the pricing program is carried out by the trade? A. Yes.

“Q. And was that not one of his duties during the months of September and October, 1944?

“A. Yes.

“Q. Was Ruth Sollie one of the section heads under [24] Mr. Mills as District Price Executive during the months of September and October, 1944?

“A. It is my recollection, Mr. Stafford, that she

(Deposition of Irvin A. Hoff.)

wasn't a section head but she was a member of the Apparel Section.

“Q. Would it be one of the duties of Ruth Sollie, as a member of the Apparel Section under Mr. Mills, District Price Executive, to send out a communication to a member of the trade bearing the signature, ‘Reed C. Mills, Price Executive, by Ruth Sollie, Apparel Section’? A. Yes.

“Q. And to all practical intents and purposes that would constitute the signature of Mr. Mills, would it not? A. Yes.

“Q. Mr. Hoff, earlier in your testimony you mentioned that on occasion the District Price Executive acts as Acting District Director, particularly in the absence for more than one business day of the District Director from the District Office. Is that a fact? A. Yes.

“Q. To your knowledge did Mr. Mills act as Acting Director at various times during his occupancy [25] of the office of District Price Executive? A. Yes.

“Q. Can you state during what periods he did so act during the year 1944? A. No.

“Q. Is the record at this time available which would show the periods during 1944 when he did so act? A. No.

“Q. During the periods when he did so act would he be vested with the authority of the District Director? A. Yes.

“Mr. Staffoffrd: That is all.”

(Deposition of Irvin A. Hoff.)

Mr. Stafford: Mr. Post, you may now read the cross-examination of this deposition.

(Thereupon, Mr. Post read the cross-examination of the deposition of Mr. Hoff.)

Cross Examination

“By Mr. Post:

“Q. Does the District Price Executive have authority in his official capacity to interpret [26] regulations issued pursuant to the Emergency Price Control Act?

“A. No. That authority is reserved to the Price Attorney.

“Q. Is there a procedure by which interpretations of regulations issued pursuant to the Emergency Price Control Act may be obtained?

“A. Yes.

“Q. Where does that procedure appear?

“A. In Revised Procedural Regulation No. 1, Sections 54 and 55.

“Q. To your knowledge is there any provision other than Revised Procedural Regulation No. 1 by which the District Price Executive might render an interpretation of a regulation issued pursuant to the Emergency Price Control Act which would be binding upon the Office of Price Administration? A. No.

“Mr. Post: That is all I have.

“(Witness excused.)” [27]

Mr. Stafford: Now, if your Honor please, be-

fore I go on to the next question I think it would be well for me to read that exhibit which has already been pointed out.

The Court: Has it been admitted in evidence?

Mr. Stafford: No.

The Court: Will a stipulation cover it?

Mr. Stafford: Well——

Mr. Post: That is Exhibit Number 2?

Mr. Stafford: Yes.

I think, Mr. Post, you will agree at this time—— will you agree that Exhibits 1 and 2 may be admitted in evidence at this time?

Mr. Post: Yes.

The Court: Detach them from that deposition and let the Clerk have them for the purpose of identifying them with proper markings.

Mr. Stafford: Is it agreeable to the Court to have exhibits marked according to the same system——

The Court: No, they will be marked according to the Court system.

Mr. Stafford: Well, this would be Defendants' Exhibit A-1, and this one, Defendants' Exhibit A-2.

(Bulletin OPA (Rev. PR-1) marked for identification as Defendants' Exhibit A-1.) [28]

(Copy of pamphlet (District Price Officer) marked for identification as Defendants' Exhibit A-2.)

The Court: Each of them upon agreement between the parties is now admitted into evidence.

(The document heretofore marked Defend-

ants' Exhibit A-1 for identification was received in evidence.)

(The document heretofore marked Defendants' Exhibit A-2 for identification was received in evidence.)

The Court: At this point the Court will be at recess for ten minutes.

(Recess.)

The Court: You may proceed.

(Mr. Stafford continues with opening statement.)

Mr. Stafford: I would like to have Miss Sollie.

RUTH SOLLIE

called as a witness by and on behalf of the defendants, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Stafford:

Q. Would you state your name, Miss Sollie?

A. Ruth Sollie.

Q. During the months of September and October, 1944, Miss Sollie, were you employed by the Seattle office of the Office of Price Administration of the United States of America?

A. Yes, I was.

Q. In what capacity?

(Testimony of Ruth Sollie.)

A. At that time I believe I was a Price Aide in the Apparel Section.

(Office of Price Administration letter, dated September 14, 1944, marked Defendants' Exhibit A-3 for identification.)

(Office of Price Administration letter, dated October 7, 1944, marked Defendants' Exhibit A-4 for identification.)

Q. (By Mr. Stafford, continuing): Miss Sollie, I hand [30] you Defendants' Exhibit A-3. I shall ask you to state if you know what that is.

A. Yes, I do.

Q. What is it?

A. It's a letter that was sent out to retailers advising them of a new regulation being issued.

Q. Was that sent out by you?

A. Yes, it was.

Q. Under the direction of Mr. Mills?

A. It was sent out by our Division, yes.

Q. And Mr. Mills was the head of that Division?
A. Yes.

Q. And on behalf of Mr. Mills you signed it with Mr. Mills' signature?

A. No, it was my signature.

Q. Well, I mean, your signature appears as acting for him, does it not?
A. Yes, it does.

Q. Now, before that was sent out, Miss Sollie, to whom did you submit that for approval?

A. I don't remember this particular letter, who

(Testimony of Ruth Sollie.)

it was submitted to for approval. Whether it was submitted to anyone for approval I don't know.

Q. Normally, was it a fact, Miss Sollie, that you submitted all such letter to the Legal Division for an [31] opinion and approval before they went out?

A. I wouldn't say on this type of letter. On letters, for instance, like acknowledgments and letters of that sort, they were all approved by the Legal Department. But this particular letter was just a letter sent out to retailers reminding them of a new requirement in the Regulations.

Q. Who wrote this letter? A. I did.

Q. You wrote it? A. Yes.

Q. Did Mr. Mills ever see it?

A. Well, I don't remember whether he saw this particular letter, but I imagine he did.

Q. I see. And that would be before it went out? A. Yes.

Q. Now, calling your attention to Defendants' Exhibit A-4, is the testimony which you have just given regarding Defendants' Exhibit A-3 the same, —does it apply to Defendants' Exhibit A-4?

A. Yes.

Q. And both of those were sent out by you?

A. Yes.

Mr. Stafford: I have no further questions. [32]

Cross-Examination

By Mr. Post:

Q. Miss Sollie, how soon after the effective date of MPR-330 did copies of that Regulation become available to the trade?

(Testimony of Ruth Sollie.)

Mr. Stafford: If your Honor please, this is cross-examination. I covered no matter of that kind in my direct examination.

The Court: What have you to say with respect to the objection?

Mr. Post: Your Honor, it has been gone into. The exhibit which has been admitted there, it makes reference to the fact that the Revised Maximum Price Regulation 330 was not at that time available.

Now, I would like to bring out the fact through this witness who identified the exhibit whether or not the Regulation ever did become available. I submit that the matter is before the Court.

Mr. Stafford: If your Honor please, my inquiry of Miss Sollie did not at all refer to this. I simply asked her if she sent it out and if Mr. Mills saw it before it went out, and I assume——

The Court: The objection is sustained.

If you need this testimony, you may bring it out properly from the witness by calling her as your [33] witness in rebuttal. You would be given that opportunity.

Q. (By Mr. Post, continuing): What was the purpose of your letters of September 14, 1944 and October 7, 1944, which have been handed you by counsel for the defense?

Mr. Stafford: Just a moment, Miss Sollie.

If your Honor please, that again is not proper cross-examination and in addition to that the documents speak for themselves. What her individual purpose was has nothing to do with this case at all.

(Testimony of Ruth Sollie.)

The Court: The objection is sustained.

Mr. Post: I have no further questions, your Honor.

The Court: The Court again repeats, Mr. Post, if you wish to later recall this witness as a part of the Plaintiff's case in rebuttal, it would become appropriate to put on rebuttal testimony.

You may step down.

(Witness excused.)

Mr. Stafford: I would like to have Mr. Mills called. [34]

REED MILLS

called as a witness by and on behalf of the Defendants, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Stafford:

Q. Will you state your name, Mr. Mills?

A. Reed Mills.

Q. During the months of September and October, 1944, Mr. Mills, were you employed by the Office of Price Administration of the United States of America? A. Yes.

Q. In what capacity?

A. Price Executive.

Q. In which District Office?

A. The Seattle District.

(Testimony of Reed Mills.)

Q. You have, have you not, heard me read the deposition of Mr. Hoff and two of the documents which Mr. Hoff stated defined the authority of the District Price Executive; did you hear me read those? A. Yes.

Q. Did you hear that portion of Mr. Hoff's testimony in which he testified that the District Price Executive was the key executive in administering the pricing [35] program? A. Yes.

Q. Is that true? A. I believe so.

Q. And that is the position you occupied during the months of September and October, 1944?

A. Yes.

Mr. Stafford: I have no further questions.

Mr. Post: I have no questions, your Honor, either.

The Court: You may step down.

(Witness excused.)

The Court: Call your next witness.

Mr. Stafford: Mr. Hanscom.

ROBERT C. HANSCOM

called as a witness herein, being first duly sworn, testified as follows:

Direct Examination

By Mr. Stafford:

Q. Will you state your name, Mr. Hanscom?

A. Robert C. Hanscom.

Q. Are you one of the defendants in this case?

(Testimony of Robert C. Hanscom.)

A. Yes.

Q. Is the business establishment known as Dorothy Hanscom's, which is named in this case, the business establishment of yourself and Dorothy Hanscom, your wife? A. That is true.

Q. Is it a fact that this place of business was opened during the month of December, 1943, for the first time? A. Yes.

Q. At that time were you operating under a pricing chart which you obtained from Best's Incorporated here in Seattle? A. Yes.

Q. Now, after you had commenced doing business, Mr. Hanscom, did you sell any merchandise at prices lower than the ceiling fixed by the pricing chart which you obtained from Best's Incorporated- A. Yes, we did.

Q. Did you sell any items at prices in excess of the ceiling fixed by that pricing chart?

A. We did not.

Q. Did you continue the merchandising policy which you [37] have just described from December, 1943, through September, 1945?

A. Yes, we did.

Mr. Post: I will object to this line of questioning on the grounds that all of the facts have been set forth in the Answer and there——

Mr. Stafford: I was not at all satisfied that the pleading was sufficiently clear in respect to the proposition which I seek to prove by Mr. Hanscom, that the communications of September 14 and October 7, 1944, were relied upon by Mr.

(Testimony of Robert C. Hanscom.)

and Mrs. Hanscom, and as a result of that reliance the Hanscoms acted to their detriment in a manner which they would not have acted had they been properly advised at that time and it is for that purpose that I wish to offer this testimony.

The Court: The objection is overruled.

Q. (By Mr. Stafford, continuing): Now, Mr. Hanscom, during the year beginning January 22, 1944, 1945, I mean, the year beginning January 22, 1945, would the total amount of—strike that, Mr. Reporter.

During the year beginning January 2, 1945, would the sales of merchandise which you made in your establishment at Fifth and University here in Seattle at [38] prices under the ceiling fixed in the pricing chart which you adopted at the time you commenced doing business in December, 1943, would the amount which was received for those sales, would the amount which would be arrived by subtracting what was received for those sales from the ceiling prices which you could have charged for those sales exceed in the aggregate \$714.01?

A. I am sorry, I am not just quite clear on that question.

Q. Well, you have already testified that throughout the year 1945, you sold some merchandise at prices lower than ceilings fixed by the pricing chart which you adopted in December, 1943, and which you continued to use throughout 1945.

Now, I am asking you if you took the total amount which you received for those sales, those

(Testimony of Robert C. Hanscom.)

particular sales and subtracted it from the amount you would have received if you had made all of those sales at the ceilings, would the result of that subtraction exceed \$714.01?

A. Yes, it would.

Q. Now, is it a fact, Mr. Hanscom, that if you had sold all merchandise that was sold by you during the four months immediately succeeding the commencement of your business in December of 1943, at the ceilings fixed [39] in your pricing chart, if you had done that, would you have had any difficulty such as the difficulty which forms the basis of this case?

A. No, we wouldn't have any difficulty.

Q. So that the whole basis of this case is the fact that you sold under your pricing ceilings?

A. That is true.

Q. During the first four months of your business?

A. That is true.

Q. If you had been properly advised by the Office of Price Administration in September and October, 1944, with respect to the filing of charts, would you have continued the merchandising policy that you did pursue?

A. No, we wouldn't have.

Mr. Stafford: You may inquire.

Cross-Examination

By Mr. Post:

Q. Mr. Hanscom, you received a communication dated October 7, 1944, from the Office of Price Administration, is that correct?

(Testimony of Robert C. Hanscom.)

A. That is true.

Q. And it is stated therein that a copy of this Revised Regulation will be sent to you by your local OPA Board as soon as they received their supply. Did you [40] receive a copy of the Regulation?

A. We did eventually.

Q. And did you read it? A. Yes.

Q. You read it? A. Surely.

Q. And did you read the part that appears in Section 2, subsection C (1) which describes what your base period is?

A. I read the Regulation. I don't recall those numbers of that particular part.

Q. Do you know what provision the Regulation makes with reference to price charts to be filed by persons starting in business after October 1st, 1942, but before May 18, 1944?

A. Yes.

Q. What is that provisions?

A. Well, the provisions required that people starting in business will be given, will be offered a pricing chart by their nearest competitor and they should not charge higher than those prices given in the chart.

Q. I am speaking of Revised Maximum Price Regulation 330. You allege in your Answer that you did file a price chart, an amended price chart, in accordance with Revised Maximum Price Regulation 330. What was the basis for [41] that price chart?

A. The basis was the instructions we had from the Office of Price Administration.

(Testimony of Robert C. Hanscom.)

Q. What were those instructions?

A. To file the chart we had been operating under.

Q. You have a chart on file now with the Office of Price Administration? A. Yes.

Q. What is the basis for that chart?

A. As a matter of fact, we have two charts there.

Q. I beg your pardon?

A. We have two charts there.

Q. The one you filed last, what is the basis for the preparation of that chart?

A. It's based on our first four months of operation.

Q. And does the Revised Maximum Price Regulation provide, 330, does the Regulation provide that that was the price chart which you should have filed in October of 1944?

A. I believe it does.

Q. Now, then, you know that that price chart based on your first four months of business was the correct price chart. Why did you not file that price chart when Revised Maximum Price Regulation 330 came out?

A. Because we thought we had already done it according [42] to the instructions given to us by the Office of Price Administration.

Q. But you testified that you filed a price chart based on your nearest competitor in the first instance and not based on your first four months of business, is that correct?

(Testimony of Robert C. Hanscom.)

A. That is true.

Q. Now, then, is the reason that you did not file a price chart based on your first four months of business due to the fact that you received certain communications in writing from the Office of Price Administration?

A. I am not quite clear on that question.

Mr. Post: Will you read it back to him, Mr. Reporter?

(The reporter read the question as above recorded.)

Mr. Post: Do you understand the question?

The Witness: No, I do not.

Mr. Post: I will restate it.

Q. (By Mr. Post): Is the reason why you did not file the correct price chart due to the fact that you received certain communications from the Office of Price Administration in writing which led you to do something else? [43]

A. We just followed the instructions we had.

Q. In those written communications?

A. Yes.

Q. Now, then, how soon after your received those written communications did you receive a copy of the Regulation?

A. I couldn't tell you accurately. I don't know.

Q. Approximately?

A. I am sorry, I couldn't tell you because I don't know. I would say within a matter of weeks, but I wouldn't be able to tell you accurately.

(Testimony of Robert C. Hanscom.)

Q. A matter of weeks. Did you read the Regulation you received? A. Yes.

Q. And why, when you received it, did you not notice that the notice regulation provided that you file a price tariff (chart) based on your first four months of business rather than the price chart which you prepared and had in your place of business based upon your nearest competitor, Best's; why did you not notice that difference, that error?

A. We felt our original chart covered that.

Q. But you didn't read the Regulation to find out, did you?

Mr. Stafford: If your Honor please, I submit [44] that is arguing with the witness. He has already testified that he read the Regulation and that he thought the chart——

The Court: Objection overruled.

A. I did read the Regulation.

Q. But you did discover the error after you read the Regulation, isn't that correct?

A. That is true.

Q. Did you ever request in writing an interpretation of Revised Maximum Price Regulation 330 from the District Price Attorney?

A. No, we never did.

Mr. Stafford: We will admit that no such request was ever made by the defendants or either of them or anyone or by anyone on their behalf.

Mr. Post: I have no further questions, your Honor.

The Court: Any further questions?

(Testimony of Robert C. Hanscom.)

Mr. Stafford: If your Honor will give me a moment.

The Court: You may have a moment to consider. How much money is involved in the claim here?

Mr. Stafford: \$700.

The Court: \$700?

Mr. Stafford: \$714.01. I have no further [45] questions.

The Court: Is there anything further?

Mr. Post: I have nothing further.

The Court: You may be excused, Mr. Hanscom.
(Witness excused.)

Mr. Stafford: The Defendants have no further testimony to offer.

The Court: Any rebuttal?

Mr. Post: I would like to call Mr. Mills for one question.

The Court: Come forward, Mr. Mills.

REED MILLS

recalled as a witness herein, having been previously duly sworn, testified further as follows:

Recross Examination

By Mr. Post:

Q. Mr. Mills, I hand you Defendants' Exhibits A-3 and A-4 and ask you to identify the same.

A. Describe them, you mean?

Q. Yes, describe what they are. [46]

(Testimony of Reed Mills.)

A. Well, they are routine letters addressed to all of a certain type of trade advising them of the existence of a regulation and requesting compliance.

Q. What was the principal purpose of those communications?

Mr. Stafford: If your Honor please, that is calling for an opinion and conclusion from the witness. The documents speak for themselves.

The Court: What is there in dispute which makes interpretation necessary?

Mr. Post: It is merely appraisal evidence to explain a written instrument, your Honor.

The Court: I don't think that is necessary.

Mr. Post: I will withdraw the question, your Honor.

Questions by the Court:

Q. Mr. Mills, did you ever have any conference with Mr. Hanscom about the prices to be charged from time to time?

A. No, I don't believe so.

Q. Did you ever receive from him, or his wife, any written communication asking for an interpretation on prices or price schedules or regular price regulations as applied to their business?

A. Not to my knowledge. [47]

Q. Did you ever personally make any written interpretation to them of any regulation?

A. No, sir.

Mr. Post: I have nothing further, your Honor, from this witness.

(Testimony of Reed Mills.)

Mr. Stafford: I should like to ask Mr. Mills one question.

Redirect Examination

By Mr. Stafford:

Q. When you say to the Court that you did not in person make any communication to the Hanscoms, certainly you did not mean to suggest that the documents which now lie before you and which are marked Defendants' Exhibits A-3 and A-4 were not sent out as your communications fully as though you had signed them yourself; you don't mean to suggest that?

A. No. That is a letter sent over my signature. It is not a direct communication.

Q. But it is a communication precisely the same in force as if it had been written——

The Court: Is it addressed to any person or firm?

The Witness: No. It is addressed to All Dealers in Women's, Misses' and Children's Outerwear [48] Garments.

The Court: I do not recall any offer being made of either of those two exhibits, A-3 and A-4.

Mr. Stafford: I would like at this time to offer them in evidence.

The Court: Any objection?

Mr. Post: I have no objection, your Honor.

The Court: Each of them is admitted.

(The document heretofore marked Defendants' Exhibit A-3 for identification was received in evidence.)

(Testimony of Reed Mills.)

(The document heretofore marked Defendants' Exhibit A-4 for identification was received in evidence.)

The Court: If there are no further questions, Mr. Mills may now be excused.

Mr. Post: I have no further matters in rebuttal.

The Court: All right.

Each side rests, is that correct.

Mr. Stafford: Yes, your Honor.

The Court: I will hear your argument at 2:00 o'clock.

How long do you think you will need, Mr. Post, to present your side of the case in argument?

Mr. Post: I believe I would like to have twenty minutes.

The Court: How much would you like, Mr. Stafford?

Mr. Stafford: I would like at least a half hour.

The Court: All right. Each of you may have a half hour beginning at 2:00 o'clock.

Court is recessed until that time.

(At this point a recess was taken to 2:00 p.m., same day, United States Court House.) [50]

[Title of District Court and Cause.]

Seattle, Washington

May 14, 1946

2:00 p.m.

(All parties present as before.)

(Closing Argument Presented By Attorneys for the
Plaintiff and Defendants, Respectively.)

COURT'S DECISION

The Court: I will never be able to approve of the position of the OPA in this case in the absence of some mandatory direction from a higher authority.

These defendants did nothing except what they were required by positive direction to do. Suppose they had refused to do it? What position would they have been in? There is no course they could have taken except to do the wrong here complained of. The only reason they did the wrong here complained of was the positive requirement of the OPA.

Surely the Government cannot take on the power positively and without any misapprehension of fact requiring its citizens to do certain acts and then laugh at them afterwards and make fun of them afterwards for having done something which was wrong just because the Government required them to do it.

The Government required them to do a specific thing. The Government through its high and mighty OPA has in effect said that we direct that you do a specific thing, but we dare you even then to do it

except at your own peril. Why, there is no law in that. That is no law. Looked at in the wildest sort of form, the essence of the OPA's position is that you, the defendants, in good faith did what the OPA required you to do, but that requirement was the OPA's error; therefore, you, the innocent defendants, must now pay the OPA for its own error. Never in the world could I consent to lend the authority of this court to perpetuate such injustice as that except in the absence of a positive mandate from a higher authority binding upon this court.

The Court finds that by reason only of the explicit and positive direction of the OPA the defendants applied the wrong ceilings, not as the result of any misinformation supplied by the defendants to the plaintiff, but as the result of defendants pursuing a course of conduct [52] charging prices required by the plaintiff without regard to any representation of fact on the part of defendants material to such positive requirement, and that in the course of time it developed that the OPA in requiring such positive conduct on the part of the defendants was itself in error; and the Court finds in view of all the circumstances here, that there was, in fact, no violation by defendants, because they did in good faith what the OPA required of them. Defendants did nothing except as required by the wholly erroneous, unjustified and positive direction of the OPA itself.

The Court finds no violation by the defendants in this case and decides that the plaintiff take

nothing by its complaint herein and that the same be dismissed.

Will you remind me as to whether or not the statute, the OPA statute, authorizes the Court to award costs against the OPA Administrator?

Mr. Stafford: I will check that, your Honor. I am not prepared to answer at this time.

The Court: I think at present——

Mr. Post: If your Honor please——

The Court: Just a moment.

I think at present the OPA attorneys are pursuing the action in a good faith effort to carry out their own obligations and that they themselves are not in any [53] way personally connected with this misconduct of the business of the OPA.

Now, Mr. Post, I will hear you respecting costs.

Mr. Post: I believe, if your Honor please—the matter of costs that might be assessed against the OPA—it is merely a matter of bookkeeping.

Frequently judgments are taken merely for the amount due and the costs are paid by the OPA. By converse, if the judgment were rendered against the OPA, I believe they would pay the costs. That is my understanding of the regulation at the present time.

The Court: As to costs, I am going to leave the parties where they found themselves.

Mr. Stafford: Does your Honor still advise me to advise the Court——

The Court: No. I am not going to award any costs in this case. Each party will stand its own costs.

Mr. Stafford: Is that all, your Honor.

The Court: Yes, that is all.

I would like to set a time as to when to settle the Order. What time would be convenient?

Mr. Stafford: Today is the 14th. Would it be agreeable, your Honor, if I would present the Order Friday, at 10:00 o'clock? [54]

The Court: Is that agreeable, Mr. Post?

Mr. Post: Yes.

The Court: It is so ordered.

The court will now be adjourned until tomorrow at 10:00 o'clock in the forenoon.

(Whereupon, at 3:00 p.m., an adjournment was taken.)

(Concluded)

CERTIFICATE

I, Bernard Ayres, do hereby certify that as Official Reporter pro tem in the above entitled court I reported the foregoing proceedings and that this transcript is a full and complete record of the same.

/s/ BERNARD AYERS,

Reporter.

[Endorsed]: Filed Sept. 3, 1946. [55]

United States Circuit Court of Appeals
In and for the Ninth Circuit

No. 11420

PAUL PORTER, Administrator, Office of Price
Administration,

Appellant,

vs.

DOROTHY HANSCOM and R. C. HANSCOM,
dba DOROTHY HANSCOM'S, a Co-partner-
ship,

Appellee.

STATEMENT OF POINTS AND
DESIGNATION OF RECORD ON APPEAL

Appellant hereby adopts as the Points upon which he will rely in this Appeal the Statement of Points appearing in the Transcript of Record certified by the Court below.

The Clerk will please print the Record in this cause as designated in and certified by the Court below together with this Statement of Points and Designation of Record on Appeal.

/s/ AUSTIN CLAPP,

/s/ WILLIAM B. WEATHERALL,

/s/ DANIEL M. REAUGH,

/s/ FREDERICK W. POST,

Attorneys for Appellant.

[Endorsed]: No. 11420. United States Circuit Court of Appeals for the Ninth Circuit. Paul A. Porter, Administrator, Office of Price Administration, Appellant, vs. Dorothy Hanscom and R. C. Hanscom, doing business as Dorothy Hanscom's, a co-partnership, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed September 3, 1946.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.